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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/799,114
Filing Date: March 11, 2004
Appellant(s): BLOOM ET AL.

Robert C. Collins
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 9, 2007 appealing from the Office action mailed February 5, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,548,329	CURRY	1985
5,320,234	KAMATH	1994
5,915,579	PRZYTULLA et al.	1999
6,112,923	MA	2000
4,418,828	WILDE et al.	1983

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kamath (US 5,320,234).

Disclosed is a tamper-indicating closure **10** that includes:

a base wall having a cylindrical skirt **12** for removably engaging a container finish,

a tamper band **24** frangibly connected to said skirt, and

a plurality of wings **28** extending inwardly from an inner surface of said tamper band for engaging a container finish,

said wings being flexibly resiliently connected to said inner surface of said band along lines that are disposed at a counterclockwise angle with respect to an axis of said skirt as viewed from inside said skirt.

The band is set forth as being 0.030 in thick. Therefore, the wings must be less than or equal to 0.030 in thick. Thus, meeting the limitation of claim 6.

The wings are set forth in Wilde et al. (US 4,418,828), which was incorporated by reference, to be angled 30° with respect to a vertical cap axis.

Claims 1,3,4,5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Przytulla et al. (US 5,915,579).

Disclosed is a tamper-indicating package that includes:

a container **10** having a finish with at least one external thread segment **28** and a plurality of external ratchet teeth **36** spaced from said thread segment, and

a tamper-indicating closure **12** that includes:

a base wall having a skirt with at least one internal thread segment for engaging said external thread segment on said finish,

a tamper band **14** frangibly connected to said skirt, and

a plurality of wings **34** extending inwardly from an inner surface of said tamper band for engagement with said ratchet teeth on said finish,

said wings being resiliently flexibly connected to said inner surface of said band along lines that are disposed at a counterclockwise angle with respect to an axis of said skirt as viewed from inside said skirt.

With respect to claim 5, the wings appear to be angled 35° in figure 4.

Claims 1,3-5,7, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ma (US 6,112,923).

As seen in figure 13, the wings **226** extend from an inner surface of the skirt **218** and are disposed at a counterclockwise angle with respect to an axis of the closure. The ratchet teeth of the container are seen in figure 16 to extend partially around the neck.

Claim Rejections - 35 USC § 103

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Przytulla.

Przytulla teaches a closure having angled projecting flexible wings on a tamper band, but is silent in the written specification regarding the preferred angle of the wings and the thickness of the wings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the wings at an angle of 30°, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Doing so provides a tamper-indicating band expedient for tamper indication.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the wings of a thickness in the range of 0.024 and 0.03 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Doing so provides a tamper-indicating band arrangement expedient for manufacturing and tamper indication.

It is noted that the common knowledge or well-known in the art statements are taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma.

Ma teaches the claimed package except for the spacing of the wings being less than the angular spacing between the ratchet teeth, and preferably one-half the spacing.

Wherein Ma indicates the design of the container in figure 16 provides tamper indication with less manufacturing consideration, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the package with the wings having one-half the angular spacing of the ratchet teeth. Doing so allows for fewer ratchet teeth to allow the same level of tamper indication and saves on manufacturing costs.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma in view of Curry (US 4,548,329).

Ma teaches at column 5, lines 18-22 that the ratchet teeth can extend partially or completely around the neck, but is silent regarding spacing the ratchet teeth in diametrically opposed groups.

Curry teaches it is known to provide a container neck with two diametrically opposed groups of ratchet teeth.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of two diametrically opposed groups of ratchet teeth. Doing so provides a more symmetric arrangement of container ratchet teeth for uniform showing of tampering.

(10) Response to Argument

Appellant argues the patents to Kamath and Przytulla fail to disclose a plurality of wings extending in a counter-clockwise direction with respect to an axis of the closure skirt. Further, appellant argues "[p]ersons of ordinary skill in the art clearly would understand that the "axis" of "a cylindrical skirt" is the axis of symmetry of the cylindrical skirt". However, it is asserted by the examiner that "an axis" can be established at any point and in any direction (e.g., longitudinally, horizontally or tangentially) with respect to the cylindrical skirt. Thus, appellant failed to clearly set forth the orientation of "an axis" of "a cylindrical skirt".

Similarly, the direction of "viewing" is not specified in the claims. One viewing the skirt with from the inside of the closure in a direction looking from the top down (as in Fig. 4 of the instant application) will see the extension of the wings in a different direction than one viewing the skirt in a direction from the bottom of the skirt toward the top wall (as in Fig. 4 of Przytulla).

Moreover, one "standing" on the skirt viewing the closure skirt will see the wings closest to the point of viewing as extending counter-clockwise and the wings spaced across the closure skirt as extending clockwise from the skirt and vice versa. Thus, the position of the axis and the direction of viewing the skirt are critically important in determining the counter-clockwise direction of extension of the wings. The wings of Kamath, Przytulla, and Ma are all seen to be connected to "lines that are disposed at a counterclockwise angle with respect to an axis of said skirt".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the wings are directly connected to the inner surface of the tamper evident band) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In the instant case, the claims merely set forth the wings as being connected to an interior of the tamper band. Viewing Fig. 13, the wings 226 are flexibly resiliently connected to the inner surface of the tamper band via the extension of web 224 (see column 5, lines 6-10).

Viewing the embodiment illustrated in figures 13 and 14 of Ma, the wings (226) are resiliently connected to the inner surface of the skirt (via the hinge of the tamper band) along "lines that are disposed at a counterclockwise angle with respect to an axis of said skirt". Kamath illustrates the wings (28) to be counterclockwise in figure 1. Similarly, the wings (34) of Przytulla are disposed at a counterclockwise angle with respect to "**an** axis" of the closure.

Thus, to the degree the limitations are set forth in the claims, the applied prior art anticipate and/or render the claims obvious as set forth in the rejections above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Robin A. Hylton
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